No. 124.

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Supreme Court of the United States.

OCTOBER TERM, 1902.

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THE MEXICAN CENTRAL RAILWAY COMPANY, LIMITED, PLAINTIFF IN ERROR,

v.

J. W. ECKMAN, GUARDIAN OF ALFONSO HUESSELMANN, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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v.

J. W. ECKMAN, GUARDIAN OF ALFONSO HUESSELMANN, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This case is brought here by writ of error to the United States circuit court for the western district of Texas, issued under the provisions of the fifth section of the act of March 3, 1891, to determine the jurisdiction of said court therein. The record whereon such jurisdictional questions arise is fully certified by the court below (Rec., 63 80).

The suit is brought by J. W. Eckman, as guardian of Alfonso Huesselmann, a minor, for the recovery of damages for injuries sustained by Huesselmann in the Republic of Mexico,

while in the employ of plaintiff in error as brakeman on the line of its road. Plaintiff's petition (Rec., 1–9) in substance alleges that he sues as guardian of Huesselmann, who is a minor, having been duly appointed guardian of his person and estate by the county court of El Paso county, Texas, and having duly qualified as such; that on February 6, 1899, Huesselmann, being at that time employed by the railway company as a brakeman on one of its freight trains, whilst engaged under the orders of the conductor in coupling the air hose on said train at a siding called La Labor, on the line of the company's railway between Tampico and Cardenas, in the Republic of Mexico, was by the backing of said train knocked down and run over by one of the cars thereof and his right leg so injured as to necessitate its amputation; that said injuries were caused solely by the negligence of the conductor of the freight train, who was acting as the representative of the railway company; that by the laws of Mexico Huesselmann has a right of action against the company, and that in consequence of the injuries complained of Huesselmann has been damaged in the sum of fifteen thousand dollars, for which and for his costs plaintiff prays judgment. The petition sets out *in extenso* those sections of the federal constitution of Mexico, the Mexican penal and civil codes, and the acts of the Mexican congress upon which plaintiff bases his right of action (Rec., 4–8).

To this petition defendant filed its plea in abatement (Rec., 9, 10), setting forth that the actual plaintiff, Huesselmann, is not a citizen or resident of the State of Texas, but is a citizen and resident of the State of Illinois; that defendant is a resident and citizen of the State of Massachusetts, and has not waived its right to be sued in the State of its

residence, and hence plead its right to be sued in the State of which it is an inhabitant, and asked that suit be dismissed. To this plea plaintiff excepted and demurred (Rec., 11), which demurrer and exception the court sustained (Rec., 11), and to that ruling of the court defendant has duly excepted (Rec., 16–18).

Its plea in abatement having been overruled, defendant filed its answer (Rec., 12–13), setting up seven separate pleas to the jurisdiction of the court, excepting to the plaintiff's petition for insufficiency in law, and traversing the allegations thereof. To the pleas to the jurisdiction contained in defendant's answer plaintiff demurred (Rec., 14), and upon said demurrer all of said pleas were overruled (Rec., 25, 73); to which ruling defendant duly excepted (Rec., 26, 78).

Thereupon, over defendant's objection, the cause was tried before a jury, who rendered a verdict for plaintiff, and judgment was entered thereon in plaintiff's favor in the sum of $12,000 and costs (Rec., 78).

It is not deemed necessary to burden this brief with a repetition of the assignments of error which are set forth in the printed record at pages 84 to 88. The questions presented thereby are certified by the court below, as follows (Rec., 78, 79):

"*First.* That Alfonso Huesselmann, at the time of the "filing of this suit, and now being a minor under twenty-"one years of age, and his father and mother both being "now alive, and at the time of the filing of this suit and "now being residents, citizens and inhabitants of the State "of Illinois, and never having been residents, citizens and "inhabitants of the State of Texas, nor the western district "of Texas, and the defendant, The Mexican Central Rail-"way Company, Limited, being incorporated under and by

"virtue of the laws of the State of Massachusetts, and at "the time of the filing of this suit, and now, being a resi- "dent, inhabitant and citizen of said State of Massachu- "setts, and never having been incorporated under the laws "of the State of Texas, and was not at the time of the filing "of this suit a resident, inhabitant, or citizen of the State of "Texas or of the western district of Texas; that said J. W. "Eckman, being guardian of the person and estate of said "Alfonso Huesselmann at the time of the filing of this suit, "and being such now, and being a resident, inhabitant and "citizen of the State of Texas and of the western district of "Texas now, and at the time of the filing of this suit; has "this court jurisdiction to try said cause, and does the citi- "zenship of said guardian, J. W. Eckman, confer jurisdic- "tion on this court, or does the citizenship of the minor "and his parents control so as to defeat the jurisdiction of "this court?

"*Second.* Whether or not this court has jurisdiction to try "and determine said suit, where the minor, Alfonso Huessel- "mann, and defendant, Mexican Central Railway Company, "Limited, are not citizens of this State and district, and "where the cause of action arose in the Republic of Mexico, "in which Republic the contract of service was made and "the services thereby contemplated were to be performed?

"*Third.* Whether or not this court has jurisdiction to try "and determine this suit under the laws of Mexico as "pleaded and proved in this case, in so far as such laws give "rights that are to be determined by successive suits, give "the right to extraordinary indemnity, considering the social "position of the injured party, and in so far as the same are "vague, indefinite, and dissimilar to the laws of our country "and contrary to our policy?

"*Fourth.* Where plaintiff's cause of action arose in the "Republic of Mexico, and the rights are to be determined "by the laws of said Republic, and where defendant has "continuously kept its property and operated its road in

"said Republic, has this court jurisdiction to hear and de-
"termine this cause in the absence of any reason shown in
"the pleading or proof why plaintiff did not bring this suit
"in the Republic of Mexico?

"*Fifth.* Where, according to the laws of the Republic of
"Mexico, no civil liability exists unless the acts that give
"rise to the civil liability must be found to be a violation of
"the criminal laws of Mexico, is the enforcement of such
"liability penal in its nature, and can this court determine
"the guilt of defendant thereunder, and adjudicate the
"rights of the parties based upon the criminal laws of said
"Republic?"

ARGUMENT.

I.

The citizenship of the ward, the actual plaintiff, not that of the guardian, the nominal plaintiff, controls.

By the first question certified by the circuit court, *supra*, the point presented for the consideration of this court is whether Huesselmann, being a minor, and his parents being residents and citizens of the State of Illinois, and the defendant being a corporation organized under the laws of Massachusetts and a resident of that State, the defendant is suable in the United States circuit court for the western district of Texas. This question was raised by the defendant's amended plea in abatement (Rec., 9), which was overruled by the court below (Rec., 11); to which the defendant duly excepted (defendant's third bill of exceptions, Rec., 16, 17).

There can be no dispute as to the fact that Huesselmann is a citizen of Illinois. In his testimony (Rec., 29) Huessel-

mann admits that his parents are both living and residents of Illinois and have never lived in Texas. It is a settled rule of law that an infant cannot change his own domicil, but his domicil remains that of his parents (*Lamar v. Micou*, 112 U. S., 452, 470; *Hardy v. De Leon*, 5 Tex., 211; *Trammell v. Trammell*, 20 Tex., 406, 417; *Franks v. Hancock*, 1 Tex. Unrep. Cas., 554; *Kennedy v. Ryall*, 67 N. Y., 379; *Potinger v. Wightman*, 3 Meriv., 67; *Dedham v. Natick*, 16 Mass., 135; *Dresser v. Edison Illuminating Co.*, 49 Fed. Rep., 257; *Dicey on Domicil*, 97, 99). It is equally settled that the guardian has no power to change the domicil of the ward. In *Lamar v. Micou, supra*, Mr. Justice Gray, speaking for the court, said (p. 472):

> "It is quite clear that a guardian appointed in a "State in which the ward is temporarily residing "cannot change the ward's permanent domicil from "one State to another."
>
> See also *Trammell v. Trammell*, 20 Tex., 406, 417; *Daniel v. Hill*, 52 Ala., 430; *Wynn v. Bryce*, 59 Ga., 529; *Vennard's Succession*, 44 La. Ann., 1076; *Mears v. Sinclair*, 1 W. Va., 185; *Marheineke v. Grothaus*, 72 Mo., 204; *Garrison v. Lyle*, 38 Mo. App., 558.

It is admitted that the railway company is a Massachusetts corporation and resident in that State (Rec., 1).

To determine, therefore, whether the citizenship of the parties could confer jurisdiction upon the court below, it remains simply to determine whether the citizenship of the guardian or of his ward controls. It is the settled doctrine of this court that, where the citizenship of the parties is the jurisdictional ground, the court in determining the ques-

tion of jurisdiction looks to the citizenship of the real parties in interest, not to that of merely nominal parties. Thus, in *Huff v. Hutchinson*, 14 How., 586, the fact that a marshal suing on an attachment bond was a citizen of the same State as the defendants was held not to oust the Federal court of jurisdiction, where the judgment creditors, the real plaintiffs in interest, were citizens of another State. And in cases where a State, or an official thereof, brings suit upon a bond for the use of another, the court looks only to the citizenship of the defendants and the persons for whose use the action is brought (*Brown v. Strode*, 5 Cr., 303; *McNutt v. Bland*, 2 How., 9; *Maryland v. Baldwin*, 112 U. S., 490; *Indiana v. Glover*, 155 U. S., 513). In cases where a person under disability, whether infant, *feme covert*, or *non compos mentis*, sues by next friend, the Federal courts have uniformly held that the citizenship of such persons, not that of the next friend, determines the jurisdiction of the court (*Williams v. Richey*, 3 Dill., 406; *Ruckman v. Palisade Land Co.*, 1 Fed. Rep., 367; *Woolridge v. McKenna*, 8 Fed. Rep., 650; *Wiggins v. Bethune*, 29 Fed. Rep., 51; *Voss v. Neineber*, 68 Fed. Rep., 947; *Blumenthal v. Craig*, 55 U. S. App., 8; 26 C. C. A., 427).

In this case the suit is brought by the guardian of the infant, instead of by his next friend, the statute of Texas (Sayles' Tex. Civ. Stats., article 2623) providing that the guardian of the estate may bring or defend suits by or against his ward. The same rule, however, applies to suits brought by guardian as to those brought by next friend. The guardian, like the next friend, is a formal party and the citizenship of the ward, not that of the guardian, controls. Where there is no guardian the suit is brought by

next friend; where a guardian has been appointed he may, in some jurisdictions, as in Texas, bring and defend suits for his ward, but in so doing he acts either as next friend or guardian *ad litem*, his function in either case being precisely the same. The guardian is not like an executor, administrator, or trustee; his powers and duties are essentially dissimilar. In the case of executors, administrators, or trustees the title to the property is in them, not in the beneficiary. But in the case of a guardian, the title to the property is not in him, but in his ward. The guardian only holds and manages the property of the ward until such time as the disability of the ward, whether it be infancy, insanity, or coverture, in removed, and when it is removed the ward steps in and assumes or resumes control of that which has always been his. In the case of the executor, administrator, or trustee title to the property can never vest in the beneficiary until the trust be fulfilled; in the case of the guardian the title to the property has never vested in him, but has always remained in the ward. This distinction was pointed out by Mr. Justice Gray in delivering the opinion of this court in the case of *Lamar v. Micou*, 112 U. S., 452, where he says (p. 472):

> "The case of a guardian differs from that of an "executor of, or a trustee under, a will. In the one "case, the title in the property is in the ward, and "the guardian has only the custody and manage- "ment of it, with power to change its investment."

The case of *Dodd v. Ghiselin*, 27 Fed. Rep., 405, was a suit brought in the Federal court by two minors, citizens of Texas, by their curator, a citizen of Missouri, against a citi-

zen of Missouri. The bill was demurred to on the ground that the court had no jurisdiction by reason of the citizenship of the parties. Mr. Justice Brewer, then circuit judge, in overruling the demurrer said (p. 406):

> "The case of *Coal Co. v. Blatchford*, 11 Wall., 172, is "cited, which holds that trustees and executors, suing "for others' benefit, are the parties holding the legal "title and the ones whose citizenship determines the "jurisdiction of the Federal court. But the title to "the property of a minor is in the minor. The cura- "tor or guardian represents him but does not have "the title;" citing *Lamar v. Micou, supra.*

The case of *Wilcoxen v. Chicago, Burlington and Quincy R. R. Co.*, 116 Fed. Rep., 444, is directly in point. The case came up on motion to remand to the State court, and in denying the motion the facts are thus stated by McPherson, D. J.:

> "This case was brought by the title above given "in the district court of Wapello county, Iowa. The "action is for a personal injury suffered by the said "Eslinger by reason of the alleged negligence of the "defendant. Subsequently Eslinger became insane, "by reason of said injury, as alleged. * * * "Within the time fixed by law the defendant filed in "the State court its petition for a removal to this "court of the case. * * * It was sufficient in all "respects to obtain a removal, unless it be with refer- "ence to the diverse citizenship."
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> * * * * * * *
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> "The defendant company now is, and for many "years has been, a corporation organized and exist- "ing under the laws of Illinois, and therefore a citizen "of that State. Eslinger, the person injured, was,

"when injured, and at all times since has been, a "citizen of Iowa. The guardian, Wilcoxen, was when "this action was commenced, and at all times since "has been a citizen of Illinois. This guardian was "appointed by the district court of Wapello county, "Iowa, sitting in probate. Therefore we have these "facts: The guardian is a citizen of Illinois. The "insane man for whose use and benefit the action is "brought is a citizen of Iowa. Can the action be re- "moved to this court on the ground of diverse citizen- "ship? Or does the citizenship of Eslinger, the insane "man, control? As the guardian, Wilcoxen, and the "defendant company are both citizens of Illinois, if "the citizenship of the guardian controls, this case "must be remanded. But as the insane man, Es- "linger, for whose use and benefit the action is "brought, is a citizen of Iowa, and the defendant com- "pany is a citizen of Illinois, the motion to remand "must be denied, and this court will retain jurisdic- "tion, provided it is the citizenship of the insane man "which governs. That all moneys recovered in this "action, if any are recovered, will go to Eslinger, the "insane man, and that Wilcoxen will receive nothing "beyond his reasonable compensation, need only be "stated."

The learned judge, after reviewing the statutes of Iowa with respect to the powers and duties of guardians, which are similar to those of Texas, says (p. 446):

"These statutes persuade me that the rule in Iowa "is, as perhaps it is elsewhere, as well as at common "law, that the title to the property is in the ward, and "not in the guardian. The guardian controls and "can manage, but has no title nor ownership, and "can only control subject to the direction of the court

"appointing him. And it being true, that the ward "has the title, and the guardian only the right of "control, is to me of importance."

He then reviews at length the decisions as to who are merely formal parties whose citizenship does not affect the jurisdiction, and concludes (p. 448):

"This court is one of limited jurisdiction, and its "jurisdiction must always be made to clearly appear. "If I were in doubt, I would remand the case. But "I am not in doubt. It clearly appears to me that "the State court was ousted of jurisdiction when the "petition and bond was filed, and the filing of the "record in this court, and that this court took juris-"diction when the record was thus filed.

"I have assumed that the guardian was regularly "and lawfully appointed. I have not considered "whether the State court had authority to appoint a "citizen of Illinois as guardian of an insane citizen "and resident of Iowa, with no estate excepting in "Iowa. And, whatsoever the purpose was in thus "securing the appointment of a citizen of Illinois to "act as guardian, *the fact that the ward is a citizen of "Iowa and the defendant a citizen of Illinois in my "opinion gives this court jurisdiction.*"

II.

The laws of Mexico as pleaded and proved and which are relied on to support this cas are so vague and indefinite and so dissimilar to the laws of Texas as to be incapable of enforcement in our courts, and are inconsistent with the statutes and public policy of Texas.

It is proper here to state that the decisions of the circuit court of appeals for the fifth circuit, as rendered in the cases of *Evey v. Mexican Central Railway Company*, 52 U. S. App., 118; 26 C. C. A., 407; *Mexican Central Railway Company v. Marshall*, 34 C. C. A., 133; *Mexican Central Railway v. Murray*, 42 C. C. A., 334, and *Mexican Central Railway Company v. Eckman*, *id.*, 344, are opposed to the contention here maintained. The opinions delivered by Judge Pardee in the three former cases and that of Judge McCormick in the latter case, following the decision of the *Murray* case, held that the laws of Mexico there pleaded, which are substantially the same as those pleaded in this case, are not so dissimilar as to be incapable of enforcement in our courts.

It is, however, submitted, with all due deference to the opinion of that learned court, that the laws of Mexico, on which this action is based, *are* so vague, so indefinite, and so dissimilar to the laws of the State of Texas, and therefore, in the absence of any statute of the United States modifying the State law, so dissimilar to the law of the *forum* as to be incapable of enforcement, and in this we are supported by the decisions of the highest court of the State of Texas. In the case of the *Mexican National Railway Company v. Jackson*, 89 Tex., 107, a case similar to the one at bar

and in which the same statutes of Mexico were relied on the supreme court of Texas, the highest court of that State, reviews those statutes and compares them with the statutes of Texas and with the common law, *pointing* out the differences and showing the impracticability of administering them in our tribunals. The consideration of these questions is so thorough and the reasoning of the court so apt that we set forth its opinion *in extenso*.

The court says (p. 113):

> "Many difficulties would present themselves in an "attempt to determine the meaning of the Mexican "law and to apply it in giving redress to the parties "claiming rights under it. We understand the Mex- "ican courts are not governed by precedent, and we "have no access to reports of adjudicated cases of those "courts from which we could ascertain their interpre- "tation of these laws. The language of some of the "articles quoted is ambiguous, and we find great dif- "ficulty in determining what would be a proper in- "terpretation of the law. We might or might not "give the same effect to the language that is given to "it in the courts of Mexico. There could be no rea- "sonable certainty that the parties' rights would be "adjusted here as they would be if the case were tried "in the courts of that country, which is their right, "for it is well settled that, if one State undertakes to "enforce a law of another State, the interpretation of "that law as fixed by the courts of the other State is "to be followed. This difficulty of itself furnishes a "sufficient reason for the courts of this State to de- "cline to assume jurisdiction of this class of cases.
>
> "We will briefly compare some of the provisions of "the law of Mexico with the law of this State, show- "ing wherein they differ, and the impracticability of

"attempting to administer them here. By the Mexi-
"can law the plaintiff's right does not rest upon the
"fact of negligence on the part of the defendant, but
"such negligence, in order to give a right of action,
"must be of such character as to make the act a
"crime under that law. We must first determine
"whether the defendant would be subject to a crimi-
"nal prosecution in Mexico, before we can proceed to
"administer the remedy provided for the wrong.
"If it is not a crime, no right of action exists, no
"matter how grossly negligent may be the act which
"caused the injury. While this is not a criminal
"prosecution, in the sense that a punishment for a
"crime is to be inflicted in this suit, it does re-
"quire a determination of the guilt of the defendant
"in order to give relief to the plaintiff. In this
"State, under the facts of this case, no such prosecu-
"tion could be maintained, nor in any case is the
"right of recovery made to depend upon the crimi-
"nality of the act; however, in some cases a recovery
"cannot be had except upon proof of facts which
"would show the act to be contrary to a penal stat-
"ute. The acquittal of the defendant under the
"Mexican law does not bar the right to recover in a
"civil proceeding, but the civil action for damages is
"suspended by the pendency of the criminal prosecu-
"tion, if such has been commenced, until its final
"determination. If a suit were pending in a court
"of this State under that law, and a criminal proceed-
"ing should be inaugurated in the courts of Mexico,
"the court here could not recognize this requirement
"of the law of that country, and stay the action until
"the prosecution there had been concluded. We
"can see no reason for the requirement of the law of
"Mexico, that the civil proceeding should be stayed
"during the prosecution of the criminal charge ex-

"cept that the Government would thereby secure the "presence of the injured party as a witness, and his "aid in the punishment of the guilty party. To per- "mit such suits to be maintained in our courts would "enable the plaintiffs therein to evade the laws of "that country in that particular, and would be against "the policy of that government. While it is true "that this is not a prosecution for the crime as such, "nor a suit for a penalty, it is so closely related to "that class of proceedings, that the courts of this State "should not aid in the enforcement of rights arising "under those laws which practically require the de- "fendant to be tried for a crime in the civil action.

"Under the laws of Mexico the judge before whom "the civil action is commenced is required to induce "the parties to adjust their differences and settle their "grievance by agreement, if he can do so. This our "courts cannot do. If this be regarded as matter of "procedure, it is of a character which may involve a "substantial benefit to the parties, of which the de- "fendant would be deprived by permitting the action "to be prosecuted in the courts of this State.

"If we conclude that the plaintiff is entitled to "relief, then we must determine what he has a right "to recover, and what protection the defendant is en- "titled to receive by the judgment of the court under "the law proved in this case. By that law the plain- "tiff would be entitled to recover for all actual dam- "ages existing at the time of the trial, and such as "must necessarily result therefrom. By our law he "would recover for all such damages, and for all such "as might probably thereafter result from the injury. "Thus, under our law, the plaintiff would have a "present right to that which he could not recover by "the terms of the Mexican law except by subsequent "actions therefor. If the plaintiff remain lamed or

"crippled, disfigured or maimed by the injury, the "Mexican law permits the judge to give, in addition "to the actual damages, what is termed extraordinary "indemnity, in a sum that might be by the judge "deemed proper considering the plaintiff's social "condition. How could a court in Texas ascertain "what this extraordinary indemnity is to be? Is it "compensatory or vindictive damages? In this State "a party by reason of social position is not entitled to "more or less compensation for such an injury, and "our courts could not afford this relief.

"The plaintiff would have the right under the law "of that country, by subsequent suits, to recover for "any damages that might arise out of the injury after "the first judgment was rendered, while in our courts "the whole sum must be adjudged in one proceeding. "After a judgment in Texas for all damages, exist- "ing and prospective, the plaintiff might, in the courts "of that country, recover for injuries subsequently "developed which might be included in the judg- "ment of the Texas court, and thus a double recovery "be had.

"Under the laws of Mexico the defendant would be "liable for injuries to plaintiff's family or to third per- "sons growing out of the injury inflicted upon plaintiff. "What this might comprehend we do not know; it "might include a part of what would be adjudged in "the judgment in a Texas court or it might not. At "any rate, it appears to be a different right to any- "thing known to the laws of Texas, and in favor of "persons who could not, under our law, maintain any "action for the alleged injury.

"If the plaintiff should recover from his injuries, "to the extent that he would become able to pursue "an occupation suitable to his education and social "position, the defendant would have the right under

" that law to have the payment of damages awarded
" for diminished capacity to earn money reduced by
" the amount that plaintiff could earn in such em-
" ployment. In this State no judgment could be
" rendered which would secure that right, but the
" judgment must be entered for all probable future
" losses; hence, the future earnings, no matter how
" great they might prove to be, could not go to reduce
" the damages already paid under such judgment as
" would be rendered in Texas. How this right would
" be secured in Mexico we cannot see unless payments
" were required by the judgment to be made in install-
" ments, or that future inability to earn money not
" being considered upon the first trial, the matter
" would be settled in subsequent suits to recover
" for such damages. In any event it is a right of the
" defendant which no court of this State can secure
" by its judgment.

" There are many points of dissimilarity between
" the laws of Mexico, as proved in this case, and the
" law of this State applicable to the same subject,
" which we have not mentioned, but those noticed are
" sufficiently numerous and material to show that the
" courts of Texas should not undertake to adjudicate
" the rights of parties arising under those laws, for
" torts committed in that country; indeed, as we
" have shown, they could not properly determine the
" rights of parties arising under those laws. The
" cases of Railway *v.* Richards, 68 Texas, 375, and
" Railway *v.* McCormick, 71 Texas, 660, were actions
" for damages caused by the death of the injured
" party, but they were decided upon the same princi-
" ples that apply to this case; that is, that the courts
" of Texas would not entertain such actions if founded
" upon a law which is materially different from the
" law of this State. The cases cited are sustained by

"the weight of authority and are conclusive of the "question in this State.

"There are other sufficient reasons why our courts "should not attempt to enforce the Mexican law in "cases like this. The reason which influences the "courts of one State to permit transitory actions for "torts to be maintained therein, when the right ac- "crued in a foreign State or country is that the de- "fendant having removed from such other State or "country cannot be subjected to the jurisdiction of the "courts where the cause of action arose, and as matter "of comity, but more especially to promote justice, "the courts of the place where he is found will en- "force the rights of the injured party against him, "because it would be unjust that the wrongdoer should "be permtted, by removing from the country where "he inflicted the injury, to avoid reparation for the "wrong done by him. In this case there has been "no removal of the person or property of the defend- "ant. Its railroad remains, as it was at the time of "the injury, within the jurisdiction of the courts of "Mexico, and it is liable to suit there according to "the laws of that country. The reason for permit- "ting the action to be prosecuted in our courts does "not obtain in this case; the plaintiff has voluntarily "resorted to the jurisdiction of our courts when his "rights could be better adjudicated in Mexico.

"The Mexican National Railroad is an important "public highway in the Republic of Mexico, by "which the commerce of that country is largely car- "ried on with our people. Every judgment for "damages rendered against it reduces its revenues, "which must of necessity be restored through its "charges for transportation of persons and prop- "erty, and in the main must be paid by that people. "It is but just, and perhaps necessary to a proper

"maintenance of that means of transportation, that "the country in which it is operated should deter- "mine the charges to be enforced against it. If Texas "should open her courts to all persons that may be "injured in Mexico in the management of that rail- "road and others, it may seriously affect the means of "commerce between this State and that Republic. "Thus it becomes a matter of public concern, and a "proper subject for our consideration in this connec- "tion, in view of the fact that the railroad company "is still subject to that jurisdiction. Justice does not "demand the exercise of the jurisdiction, and comity "between the governments of this State and Mexico "would seem to forbid that we should do so (Thomas "*v.* Gardner, 14 Johns, 134; Johnson *v.* Dalton, 1 "Cow., 543).

"There are at this time two systems of railroads "extending from the borders of this State into Mexico "for several hundred miles each, and as that country "shall hereafter develop, and commerce between the "two countries become more extended, we may expect "other lines to be constructed in the same direction. "If our courts assume to adjust the rights of parties "against those railroads growing out of such facts, as "in this case, we will offer an invitation to all such "persons, who might prefer to resort to tribunals in "which the rules of procedure are more certainly "fixed and the trial by jury secured, to seek the "courts of this State to enforce their claims. Thus "we would add to the already overburdened condi- "tion of our dockets in all the courts, and thereby "make the settlement of rights originating outside the "State, under the laws of a different government, a "charge upon our own people. If the facts showed "that this was necessary in order to secure justice, "and the laws were such as we could properly enforce,

> "this consideration would have but little weight, but "we feel that it is entitled to be considered where the "plaintiff chooses this jurisdiction as a matter of con- "venience and not of necessity.
>
> "We conclude that the district court and the court "of civil appeals erred in not dismissing this case "under the proof made, for which error the judg- "ments of both of said courts are reversed and this "cause is dismissed."

We think that an examination of the Mexican statutes as set out in the record will convince the court that the laws of Mexico here relied on are so fundamentally different from our laws, and so radically opposed to our system of jurisprudence, that the *lex fori* cannot be harmonized with the *lex loci*, and hence substantial justice cannot be done to the parties litigant.

Mexican National Railway Co. v. Slater, 115 Fed. Rep., 593, was an action brought for the recovery of damages for death resulting from wrongful negligence. The court of appeals for the fifth circuit held that the laws of Mexico upon which plaintiffs based their right of action were so dissimilar to the laws of Texas that they could not, consistently with substantial justice to the parties, be enforced in the Federal court. In the course of the opinion McCormick, J., speaking for the court, says (p. 603):

> "On the subject of jurisdiction, therefore, it re- "mains to inquire only whether, consistently with "our forms of procedure and law of trials, we can do "substantial justice between the parties. From the "nature of our system of national judicature, and "from the nature of the case, there is no general law "or statute of the United States prescribing the forms

"of procedure and the law of the trial in such cases "in the circuit court other than the statute which re- "quires that the forms and modes of procedure in "civil causes in the circuit court shall conform as "nearly as may be to the forms and modes of pro- "cedure existing at the time in like cases in the "courts of record of the State within which the cir- "cuit court is held (Rev. St., § 914). As we have "seen, 'in cases of other than penal actions, the for- "'eign law, if not contrary to our public policy, or "'to abstract justice, or pure morals, or calculated "'to injure the State or its citizens, shall be recognized "'and enforced here, if we have jurisdiction of all "'necessary parties, and if we can see that, consist- "'ently with our own forms of procedure and law of "'trials, we can do substantial justice between the "'parties. If the foreign law is a penal statute, or if "'it offends our own policy, or is repugnant to justice "'or to good morals, or is calculated to injure the "'State or its citizens, or if we have not jurisdiction "'of the parties who must be brought in to enable us "'to give a statutory remedy, or if, under our forms "'of procedure, an action here cannot give a substan- "'tial remedy, we are at liberty to decline jurisdic- "'tion' (*Higgins v. Railroad Co.*, 155 Mass., 176, 180; "29 N. E., 534, 535; 31 Am. St. Rep., 544; quoted "with approval in *Huntington v. Attrill*, 146 U. S., "657; 13 Sup. Ct., 224; 36 L. Ed., 1123). We must, "therefore, look somewhat closely to the Texas law "and practice thereunder preparatory to a comparison "of that law with the laws of Mexico, to determine "whether the circuit court, in an action at law, can "give a substantial remedy and do substantial justice "between the parties in this cause."

While the whole tenor and spirit of the Mexican law upon the subject of torts is variant from that of our own laws and procedure, there are certain specific fundamental differences which, we contend, are so in conflict with the procedure in our courts that to attempt to give them effect would result in grave injustice.

Article 313 of the Federal Penal Code of Mexico, Book Second (Rec., 5), provides that—

> "The judges who take cognizance of suits based "upon civil responsibility shall endeavor that the "amount and terms of payment be fixed by agree-"ment of the parties."

There is no method under our practice by which the differences of parties litigant can be reconciled, save upon the initiative of the parties themselves.

As said by the court in *Railway Company v. Jackson, supra*, in commenting upon this article:

> "This our courts cannot do. *If this be regarded as "matter of procedure, it is of a character which may "involve a substantial benefit to the parties, of which the "defendant would be deprived by permitting the action "to be prosecuted in the courts of this State.*"

By article 323 of the Federal Penal Code of Mexico (Rec., 6) it is provided that the judge, in determining the extraordinary indemnity to be awarded as defined in article 305 of the Penal Code (Rec., 5), shall take into consideration the social position of the party injured. But to state this requirement is to show its utter repugnance to our fundamental ideas of justice. Whether the party injured be rich or whether he be poor; whether he have many de-

pendent upon him or none, is not to be considered in estimating the damages to which he may be entitled (*Pennsylvania Company v. Roy*, 102 U. S., 451).

Article 306 of the Federal Penal Code (Rec., 5), under the head of "Civil liability in criminal matters," is as follows:

> "The condition required by the two preceding articles [those defining reparation and indemnification] "that the damages and injuries should be actual, "shall not prevent the *indemnization* [evidently a mis-"translation of the Spanish word *indemnizacion* mean-"ing indemnification] for subsequent damages and "injuries be exacted by a new suit, when they shall "have accrued; if they proceed directly from, and as "a necessary consequence of, the same act or omission "from which resulted the previous damages or in-"juries."

From this article it is clear that the Mexican law contemplates and provides for successive actions based upon the same tort, and contains no provision for compounding or determining full damages for a continuing injury. The rule of the common law is that a second suit cannot be brought based upon the same wrongful act. Damages resulting from the same tort must be assessed and recovered once for all. The maxim "*interest reipublicæ ut sit finis litium*" is an ancient one. In the old leading case of *Fetter v. Beale*, 1 Salk., 11; 1 Ld. Raymd., 339, the plaintiff having once recovered for assault and battery resulting in the fracture of his skull brought a second suit alleging that after he had recovered judgment in the first suit another piece of his skull came out. The court, per Holt, C. J., held that he could not recover, the judgment in the first suit being a bar to any

subsequent suit for additional injuries resulting from the same act, and the doctrine there laid down has been uniformly followed. The tort is held to be discharged by judgment. As said in *Kitchen v. Campbell*, 3 Wils., 304; W. Bl., 827, "You shall not bring the same cause of action twice to "a final determination; '*Nemo debet bis vexari pro eadem* "'*causa*'; and what is the same cause of action is where the "same evidence will support both actions."

In *Mitchell v. Darley Main Colliery Co.*, 14 Q. B., 125; 11 App. Cas., 127, the court, per Lord Bramwell, said:

> "It is the rule that where a thing directly wrong-
> "ful in itself is done to a man, and is in itself a cause
> "of action, he must, if he sues in respect of it, do so
> "once for all. So, if he is beaten or wounded, if he
> "sues he must sue for all his damages, past, present,
> "and future, certain and contingent. *He cannot main-*
> "*tain an action for a broken arm and subsequently for a*
> "*broken rib, though he did not know of it when he com-*
> "*menced his first action.*"

And the same rule is followed by the courts in this country.

In *Filer v. Railroad Co.*, 49 N. Y., 42, the court said (p. 44):

> "Successive actions cannot be brought by the
> "plaintiff for a recovery of damages, as they may
> "accrue from time to time, resulting from the injury
> "complained of, as would be the case for a continuous
> "wrong or a continued trespass. The action is for a
> "single wrong, the injury resulting from a single act,
> "and the plaintiff was entitled to recover not only
> "the damages which had been actually sustained up
> "to the time of the trial, but also compensation for

"future damages; that is, compensation for all the "damages resulting from the injury, whether present "or prospective."

In *Railway Company v. Mohlman*, 17 Kan., 224, Mr. Justice Brewer, then upon the bench of the supreme court of Kansas, said (p. 228):

"True, the trespass has now resulted in greater "loss than was then foreseen or estimated in assess- "ment of damages; but an increase in the damages "resulting adds no new cause of action. A commits "an assault on B. Action is brought, and damages "recovered. That ends the matter; and though B's "sufferings are prolonged, and his injuries prove to "be permanent, and of a far more serious character "than was thought at the time of the recovery of "damages, there can be no new action and no further "recovery (*Fetter v. Beale*, 1 Salk., 11)."

And this is the rule in Texas. In *Street Railway Co. v. Muth*, 7 Tex. Civ. App., 443, the court said (p. 451):

"A personal injury from a single wrongful act of "negligence is an entirety, and in an action on it re- "covery may be had for all damages suffered up to "the time of the trial, and for all which are shown to "be reasonably certain or probable to be suffered in "the future."

The Mexican law, unlike that of this country, does not provide for the recovery of contingent damages. From an examination of the different articles of the Penal Code it is evident that the party injured can only recover for the direct and immediate damages which he has suffered, not

for those which are mediate or consequential to the injury. Articles 304 and 305 (Rec., 5) read:

> "Art. 304. Reparation comprehends: The payment "of all the damages caused to the injured party, to his "family, or to a third person, for the violation of a "right which is formal, existing, and not simply pos- "sible, if such damages are actual, and arise directly "and immediately from the act or omission com- "plained of, or there be a certainty that such act or "omission must necessarily cause, as a proximate and "inevitable consequence."

> "Art. 305. Indemnization [indemnification] im- "ports: The payment of damages, that is, of that "which the injured party fails to enjoy as a direct "and immediate consequence of an act or omission "by which a formal, existing and not merely possible "right is attacked, and of the value of the fruits of "the thing usurped and already consumed, in the "cases in which the same should be done conformably "with civil right."

The measure of damages, where the party is not permanently injured, is the actual loss sustained by him at the time of bringing suit. Article 321 (Rec., 6) provides:

> "In case of blows or wounds from which the in- "jured party does not remain crippled, lamed or de- "formed, he shall have the right that the responsible "party pay him all expenses of cure, the damages he "may have suffered, and that which he may fail to "gain during the time which in the opinion of com- "petent persons he may not be able to do the work by "which he subsisted. But it is essential that the in- "ability to do the work should be the direct result of "the wounds or blows, or be a cause which is the im- "mediate effect of such blows or wounds."

In the event that the injury sustained be permanent, it is provided by article 322 (Rec., 6):

> "If the inability of the injured party to devote himself to his accustomed work be permanent, from the moment in which he shall recover and can properly devote himself to other and different work, which may be lucrative and appropriate to his education, habits, social position and physical constitution, the civil responsibility shall be reduced to paying him the sum which his ability to earn in his new employment falls short of his daily earnings in his former occupation."

The method by which that liability shall be determined is prescribed in article 324 of the Penal Code (Rec., 6):

> "The gain which the injured party fails to earn during his inability to work shall be computed by multiplying the sum which he formerly earned per day by the number of days of his disability."

It will be seen from these provisions of the Mexican Code that the relief to which one who sustains permanent injuries is entitled is in the nature of a pension, the amount of which is determined by the difference between the earnings of the injured party before and after the injury, for the recovery of which he may bring suit from time to time. This is analogous to the remedy given by the Mexican Penal Code in cases of death through wrongful negligence, as to which the court says in *Railway Company v. Slater*, 115 Fed. Rep., 593, 608:

> "Without requoting here or attempting further to analyze the provisions of the statute law of Mexico set out in the statement of the case and to some

"extent considered in the foregoing part of this "opinion, it appears clear to us from a careful com- "parison of the different sections of the statute and "a careful consideration of the deposition of the "Mexican lawyer that the right created by the Mex- "ican laws is the right to a continuing support during "the periods of time that support would have been due "from the deceased, and in the amount that it would "have been due, proportioned to his ability to give it "and the necessities of those who had the right to re- "ceive it. Any judgment that may be rendered against "the defendant must as studiously respect and enforce "its right as it does the rights of the plaintiffs. Lim- "itations placed on the right of the plaintiff are for "the protection and just treatment of the party bound. "The provisions of the Mexican law which we are "considering seem to regard and relate to not only "the paramount interest of the individual parties to "the transactions, liabilities, and reparations, but also "to the interest of the public in having the support "due to the beneficiaries so extended that it will con- "tinue through the period for which it is provided. "The provisions of the Mexican statute on this sub- "ject have in view the declaring and conserving the "interest of Mexican citizens; and where, as in this "particular case, the beneficiaries are citizens of the "United States, our laws, State and national, as ad- "ministered in our courts, may be deemed adequate "to authorize and secure the preservation of the "rights of the beneficiaries and the protection of the "interest of the public, and may yet be not adequate "to the due enforcement of the limitations put upon "the plaintiff's right for the just protection of the "party charged."

As to the inapplicability of the Mexican statutes here relied on, the decision of the supreme court of Texas, in *Railway Company v. Jackson, supra*, is, we contend, sound law and should be followed by the Federal courts. In *Texas & Pacific Railway Company v. Cox*, 145 U. S., 593, Mr. Chief Justice Fuller, in stating the cases in which a statutory delict is justiciable in a foreign jurisdiction, says (p. 605):

> "Notwithstanding some contrariety of decision
> "upon the point, the rule thus stated is generally recog-
> "nized and applied *where the statute of the State in which*
> "*the cause of action arose is not in substance inconsistent*
> "*with the statutes or public policy of the State in which*
> "*the right of action is sought to be enforced.*"

And in *Higgins v. Railroad Company*, 155 Mass., 176, quoted with approval in *Huntington v. Attrill*, 146 U. S., 657, 675, the court says:

> "These principles require that, in cases of other
> "than penal actions, the foreign law, if not contrary
> "to our public policy, or to abstract justice or pure
> "morals, or calculated to injure the State or its citi-
> "zens, shall be recognized and enforced here, if we
> "have jurisdiction of all necessary parties, *and if*
> "*we can see that, consistently with our own forms of pro-*
> "*cedure and law of trials, we can do substantial justice*
> "*between the parties.* If the foreign law is a penal
> "statute, or if it offend our own policy, or is repug-
> "nant to justice or to good morals, or is calculated to
> "injure this State or its citizens, or if we have not
> "jurisdiction of parties who must be brought in to
> "enable us to give a satisfactory remedy, or if under
> "our forms of procedure an action here cannot give
> "a substantial remedy, we are at liberty to decline
> "jurisdiction."

The decision of the highest court of Texas has held that the statutes of the Republic of Mexico upon which the plaintiff bases his action are inconsistent with the law, statutory and common, of Texas. In so far as it is a decision by the highest court of a State upon the laws thereof, this decision should be accepted and followed by the Federal courts. As said by the court in *Leffingwell v. Warren*, 2 Bl., 599, 603:

> "The construction given to a statute of a State by "the highest judicial tribunal of such State, is re- "garded as a part of the statute, and is as binding "upon the courts of the United States as the text."

And as said by Mr. Justice Field, speaking for the court, in the case of *Louisiana v. Pillsbury*, 105 U. S., 278, 294:

> "So far does this doctrine extend, that when a stat- "ute of two States, expressed in the same terms, is "construed differently by the highest courts, they are "treated by us as different laws, each embodying the "particular construction of its own State, and en- "forced in accordance with it in all cases arising "under it."
>
> *Burgess v. Seligman*, 107 U. S., 20.
> *Bucher v. Cheshire R. R. Co.*, 125 U. S., 555, 583.
> *Stutsman County v. Wallace*, 142 U. S., 293, 306.
> *Schurtz v. Cook*, 148 U. S., 397, 411.

On the other hand, in so far as the decision of the State court is upon questions of general law involving the interpretation of foreign statutes, it is not, of course, binding upon the Federal courts, and this court must exercise its judgment independently of the State courts. Yet, as said by this court in *Railroad Company v. Baugh*, 149 U. S., 368, 370,

this court will lean toward an agreement with the State courts. The decisions of the supreme court of Texas and of the court of appeals for the fifth circuit upon the questions here involved are diametrically opposed, and a plain and palpable conflict of decisions, with its resulting confusion, thus arises. The Federal courts entertain jurisdiction of this case *solely* because of the alleged diversity of citizenship of the parties litigant. The courts of the United States sitting in Texas, by entertaining jurisdiction of this and similar cases, invite into their tribunals a numerous class of cases, cognizable *solely* upon the ground of diversity of citizenship, of which the courts of Texas decline to entertain jurisdiction, and by so doing the Federal courts are, we contend, opening their doors to abuse and injustice, rather than lending their aid to promote justice, which should be the sole reason that they should entertain jurisdiction of causes of action founded upon statutes of a foreign country. In the case at bar a citizen of Illinois has a guardian appointed in Texas, presumably for the sole purpose of bringing this action, when he could with equal ease cross the Rio Grande river and file suit in the Mexican courts, in which courts only can the plaintiff have the relief contemplated and authorized by the statutes giving the right of action. It is to avoid this conflict of State and Federal decision, with all its disastrous results, that the supervisory power of this court has been invoked. The true solution of the conflict is, we submit, to hold that, in cases like the one at bar, the courts of the United States should refuse, as do the courts of Texas, to entertain the action.

Tested by the fundamental law, it is submitted the case at bar is not one wherein the Federal courts should prop-

erly declare or enforce a rule of adjudication admittedly contrary to that declared by the highest court of the State wherein the Federal court is exercising jurisdiction. Admittedly, this case presents no *Federal* question. If the action had been presented in the State courts, and the rule as declared in the *Jackson* case were reaffirmed here by the highest court of Texas, review of that judgment in this court could not be had; for the questions thus decided would not involve a right set up and denied under the Constitution, treaties, or laws of the United States or the claimed repugnancy of a statute of the State to the Federal Constitution. This being clearly true, ought the court to declare in a case wherein jurisdiction arises solely through diverse citizenship that the law of Mexico, whereunder recovery is sought, is *not* incompatible with the law of Texas as enforced and expounded by its highest court? It cannot be denied that the latter court *has* declared that the law of tort, as interpreted and applied in Texas and under Texas law and procedure, *is*, in respect of such a case as this, so dissimilar from the Mexican law as to prevent recovery thereunder in the State courts of Texas. In declaring a contrary rule the Federal court is not interpreting or applying Federal law or statute. It is sitting in the jurisdiction of a *State* whose highest court has declared that the law *in and of* that State will not permit such recovery because the foreign law on which the claim is founded cannot be enforced in that State in consonance with its laws. Should, then, the Federal court ignore this declaration of the scope and meaning of the Texas law and within the same jurisdiction declare and enforce a wholly different rule?

The recognition and enforcement of the laws of one State

by another depends solely upon the principle of comity. The obligatory force of such laws cannot extend beyond the jurisdiction of the State enacting them, and whatever force and obligation they may have in another country depends solely upon the polity and jurisprudence, and the tacit or express consent of that other country. As said by Mr. Justice Story in his work on the Conflict of Laws (8th ed. Bigelow, p. 25, sec. 23):

> "A State may prohibit the operation of all foreign "laws, and the rights growing out of them within its "own territories. It may prohibit some foreign "laws, and it may admit the operation of others. It "may recognize and qualify some foreign law; it may "enlarge or give universal effect to others."

And again (p. 33, sec. 34), he says:

> "In a vast variety of cases which may be put, the "rejection of the laws of a foreign nation may work "less injustice than the enforcement of them will "remedy. And here again every nation must judge "for itself what is its true duty in the administration "of justice in its domestic tribunals. It is not to be "taken for granted that the rule of a foreign nation "which complains of a grievance is right, and that "its own rule is wrong."

The principle of comity, although one of international law, is in its application essentially a matter of municipal and local law, and as such is in the United States, in the absence of treaty stipulations, peculiarly a matter for the determination of the State courts. It is obvious that the State court is the appropriate tribunal to pass upon the question of whether a foreign statute is or is not in conflict

with the laws and public policy of the State, and having passed upon that question its decision thereon should be followed by the Federal courts in the State, whose duty it is to apply the laws of the State, as well as of the United States, to the controversies before them.

The court, in *Evey v. Railway Co., supra*, commenting upon the case of *Railway Company v. Jackson*, says (p. 307):

> "It is to be noticed that the action was one in a "court of the State of Texas brought by a citizen of "that State against a foreign corporation, and that "the suit before us is one brought in a court of the "United States by a citizen of the United States "against another citizen of the United States. In "the Texas case the right to sue may be affected by "comity. In our case the right to sue is specifically "granted by the statute and appears to be absolute."

We submit that the court is here in error. The question before it for determination was not whether the plaintiff, having an undoubted remedy, could enforce it in the Federal court, but whether upon his case there was any remedy to which he was entitled.

Whilst the right of a citizen of one State to sue a citizen of another State in the courts of the United States, where he has a right of action and where the amount in controversy is within the jurisdictional limit, is by statute specifically granted, and hence a fixed and absolute right in the suitor to which the Federal courts must give effect, the question of whether he has a right of action, whether there is a remedy for his case, is necessarily one to be resolved by the court, and the solution of this question in the *Evey* case, as in the *Jackson* case, involved the application of the principle of

comity, the only difference in the two cases being that in the *Evey* case the court had before it the authority and precedent of the decision of the State court in the *Jackson* case.

Viewed in its international aspect, as between the United States and the Republic of Mexico, it is submitted that the principle of international comity gives no justification for the recognition and enforcement of Mexican laws in cases such as this. The defendant company, though a citizen of the United States, owns and operates a line of railway situated almost entirely within territory belonging to the Republic of Mexico; almost all the property of the company is in Mexico; the company's contracts of service with its employés are there made and for services to be performed in Mexico, as is the certified fact in this case. The company's business is one of the highest public utility to the Republic of Mexico. Its line of road is one of the great public trade highways of that country, serving to connect the commerce of Mexico with that of the United States. It is specially recognized by the laws of that country and has a special concession from the Mexican government. It is but just and proper that the country in which the company operates; where it performs a great and necessary public service, and to whom its line is one of the vital arteries of commerce, should, in the absence of some far more cogent reason than any in this case alleged, adjudicate its controversies there arising. The Mexican courts are open to all for the redress of any grievances sustained from the company, whether by its own citizens or by citizens of the United States or of other countries, and there is no just reason why parties aggrieved should not prosecute their

claims against the company in the courts of Mexico, rather than resort to the courts of the United States across the line of the international boundary. Their rights can be as well, if not better, adjudged there than here. For the courts of the United States to undertake the adjudication of those controversies is not comity—it is discourtesy. It is to cast a slur upon the Mexican courts, and in effect to say that they are either unwilling or unable to render substantial justice. This aspect of the matter is aptly and clearly presented by the supreme court of Texas in the concluding paragraph of its opinion in *Railway Company v. Jackson*, *supra*.

III.

The laws of Mexico as pleaded and proved and which are relied on to support this case are penal in their character and such as should be given no extra-territorial effect.

The fifth question certified, *supra*, is thus stated (Rec., 79):

> "Where, according to the laws of the Republic of "Mexico, no civil liability exists unless the acts that "give rise to the civil liability must be found to be a "violation of the criminal laws of Mexico, is the "enforcement of such liability, penal in its nature, "and can this court determine the guilt of defendant "thereunder, and adjudicate the rights of the parties "based upon the criminal laws of said Republic."

Chief Justice Marshall tersely stated the rule as an established maxim "The courts of no country execute the penal laws of another" (*The Antelope*, 10 Wheat., 66, 123).

And such is the rule as between the States.

Wisconsin v. Pelican Ins. Co., 146 U. S., 265, 291.

The provisions of the law of Mexico applicable to this inquiry are article 11 of the Federal Penal Code of Mexico (Rec., 4); articles 326 and 327 of the same code, Book Second, civil liability in criminal matters (Rec., 6); article 26 of the Penal Code (Rec., 7), and the act of the Mexican Congress, December 16, 1881, articles 184 and 298 (Rec., 8). They are fully considered by the highest court of Texas in the Jackson case, *supra*, and that court concludes its consideration thereof thus:

> "While it is true that this is not a prosecution for "the crime as such, nor a suit for a penalty, it is so "closely related to that class of proceedings, that the "courts of this State should not aid in the enforce- "ment of rights arising under these laws which prac- "tically require the defendant to be tried for a crime "in the civil action."

It is of course settled by authority, whereof *Huntington v. Attrill*, 146 U. S., 657, is the leading case, that foreign penal laws which will not be enforced are those which involve a wrong to the public (p. 668) and not those which involve a wrong to the individual, and for which remedy in damages by civil action is given. But the case at bar in this aspect is clearly distinguishable from this line of authorities on two grounds:

First. That the penal provisions of this Mexican law involve fines for the benefit of the public treasury and are hence treated as public wrongs; and

Second. The public penal provisions and the civil remedy provided are so closely related as not to be enforceable under

our system as ruled in the Jackson case, *supra*, for, *inter alia*, the law of Mexico provides, article 26, Penal Code (Rec., 5):

> "Actions to enforce the civil liability may be "brought before a court of civil jurisdiction whether "or not the criminal proceeding has been commenced; "but while the latter is pending the proceedings in "the former shall be stayed."

Manifestly, proceedings in a civil action in the courts of the United States for an injury sued on under this Mexican law would not be so stayed, and yet the public interest in requiring such suspension is manifest and controlling, as well reasoned in the Jackson case, *supra*.

It is respectfully submitted that each of the questions propounded by the court below should be answered by this court in the negative, as to the jurisdiction of the circuit court to entertain this cause, and that the judgment of that court herein rendered should be reversed.

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